



2011 SENATE BILL 319

December 6, 2011 - Introduced by Senators VINEHOUT, HOLPERIN and SHILLING, cosponsored by Representatives MOLEPSKE JR, MILROY, HEBL, BERCEAU and CLARK. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

1 **AN ACT** *to renumber* 227.137 (5), 227.137 (6) (a), 227.137 (6) (b), 227.137 (6) (c)
2 and 227.137 (6) (d); *to renumber and amend* 227.137 (6) (intro.) and 227.137
3 (7); *to amend* 227.135 (2), 227.135 (3), 227.137 (2), 227.137 (3) (intro.), 227.137
4 (4), 227.14 (2) (a) 6., 227.17 (3) (em), 227.185, 227.19 (3) (intro.), 227.24 (1) (e)
5 1d. and 227.24 (1) (e) 1g.; and *to create* 227.135 (2m), 227.135 (5), 227.137 (2m),
6 227.137 (3m), 227.137 (4m) and 227.137 (6) (cm) of the statutes; **relating to:**
7 elimination of the requirement that the governor approve a proposed rule that
8 was considered at the joint annual spring fish and wildlife rule hearing of the
9 Department of Natural Resources and county meeting of the Wisconsin
10 Conservation Congress and limitation of the scope of the requirement that an
11 economic impact analysis be prepared for such a proposed rule.

Analysis by the Legislative Reference Bureau

Introduction

2011 Wisconsin Act 21 made various changes relating to the administrative rule-making process, including requiring gubernatorial approval of the statement

SENATE BILL 319

of the scope of a proposed rule (statement of scope) and the final draft of a proposed rule and expanding the scope of the requirement that an economic impact analysis be prepared for a proposed rule.

This bill eliminates those changes, thereby restoring prior law, with respect to a proposed rule that was considered at the joint annual spring fish and wildlife rule hearing of the Department of Natural Resources and county meeting of the Wisconsin Conservation Congress.

Gubernatorial approval of proposed rules

2011 Wisconsin Act 21 made certain changes with respect to the statement of scope that must be approved before any state employee or official may perform any activity in connection with the drafting of the proposed rule. The act:

1. Required a statement of scope to be approved by the governor before a state employee or official may perform any activity in connection with the drafting of a proposed rule. Prior law required only the individual or body with policy-making powers over the subject matter of the proposed rule (policy-making individual or body) to approve a statement of scope before those activities may be performed.

2. Eliminated automatic approval of a statement of scope if the policy-making individual or body does not disapprove the statement of scope within 30 days after it is presented to that individual or body, or by the eleventh day after its publication in the Wisconsin Administrative Register, whichever is later. Prior law permitted automatic approval of a statement of scope if the policy-making individual or body did not disapprove the statement of scope within that period.

3. Required an agency to prepare and obtain approval of a revised statement of scope if after a statement of scope is approved the agency changes the scope of the proposed rule in any meaningful or measurable way. Prior law did not require a revised statement of scope if the scope of a proposed rule changed after approval of the original statement of scope.

4. Required an agency to prepare and obtain approval of a statement of scope for a proposed emergency rule in the same manner as a statement of scope is prepared and approved for a nonemergency rule. Prior law did not require a statement of scope for an emergency rule.

This bill eliminates those changes, thereby restoring prior law, with respect to a proposed rule that was considered at the joint annual spring fish and wildlife rule hearing of the Department of Natural Resources and county meeting of the Wisconsin Conservation Congress.

In addition, 2011 Wisconsin Act 21 required an agency to submit a proposed rule in final draft form to the governor for approval before the rule may be submitted to the legislature for review and to submit a proposed emergency rule in final draft form to the governor for approval before the emergency rule may be filed with the Legislative Reference Bureau for publication.

This bill eliminates those requirements with respect to a proposed rule that was considered at the joint annual spring fish and wildlife rule hearing of the Department of Natural Resources and county meeting of the Wisconsin Conservation Congress.

SENATE BILL 319***Economic impact analyses for proposed rules***

When report must be prepared. 2011 Wisconsin Act 21 required an economic impact analysis, which is an analysis of the economic effect of a proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole, to be prepared for all rules proposed by any agency. The act also required the Department of Administration to issue a report on a proposed rule, and the secretary of administration (secretary) to approve a proposed rule, if the economic impact analysis indicates that a total of \$20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses and individuals as a result of the proposed rule. In addition, the act required an agency to prepare a revised economic impact analysis if a proposed rule is modified after the original economic impact analysis is submitted so as to significantly change the economic impact of the proposed rule.

Prior law required an economic impact analysis to be prepared only if the secretary directed the analysis to be prepared on the petition of a municipality, an association that represents a farm, labor, business, or professional group, or five or more persons who would be affected by the proposed rule. Prior law permitted the secretary to direct the preparation of an economic impact analysis in any case and required the secretary to direct the preparation of such an analysis if: 1) the proposed rule would cost affected persons \$20,000,000 or more during each of the first five years after the rule's implementation to comply with the rule; or 2) the rule would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

This bill eliminates the changes made by 2011 Wisconsin Act 21 and restores prior law with respect to when an economic impact report must be prepared for a proposed rule that was considered at the joint annual spring fish and wildlife rule hearing of the Department of Natural Resources and county meeting of the Wisconsin Conservation Congress.

Content of analysis. 2011 Wisconsin Act 21 also required certain additional information to be included in an economic impact analysis. Specifically, in addition to the information that was required to be included in an economic impact analysis under prior law, the act required an economic impact analysis to also include:

1. Information on the effect of a proposed rule on public utility ratepayers.
2. An analysis of alternatives to the proposed rule, including the alternative of not promulgating the rule.
3. A determination made in consultation with the businesses and individuals who may be affected by the proposed rule as to whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.
4. Comparisons with the approaches used by the federal government and by Illinois, Iowa, Michigan, and Minnesota to address the policy problem that the proposed rule is intending to address and, if the approach chosen by the agency to address that policy problem is different from those approaches, a statement as to why the agency chose a different approach.

SENATE BILL 319

5. An assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.

Under prior law, an economic impact analysis was required to contain information on the effect of the proposed rule on specific businesses, business sectors, and the state's economy and to include all of the following: 1) an analysis and quantification of the problem, including any risks to public health or the environment, that the rule is intending to address; 2) an analysis and quantification of the economic impact of the rule, including costs reasonably expected to be incurred by the state, governmental units, associations, businesses, and affected individuals; and 3) an analysis of benefits of the rule, including how the rule reduces the risks and addresses the problems that the rule is intended to address.

This bill eliminates the changes made by 2011 Wisconsin Act 21 and restores prior law with respect to the information that must be included in an economic impact analysis for a proposed rule that was considered at the joint annual spring fish and wildlife rule hearing of the Department of Natural Resources and county meeting of the Wisconsin Conservation Congress.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 227.135 (2) of the statutes, as affected by 2011 Wisconsin Act 21,
2 is amended to read:
3 227.135 (2) ~~An~~ Except as provided in sub. (2m), an agency that has prepared
4 a statement of the scope of the proposed rule shall present the statement to the
5 governor and to the individual or body with policy-making powers over the subject
6 matter of the proposed rule for approval. The agency may not send the statement
7 to the legislative reference bureau for publication under sub. (3) until the governor
8 issues a written notice of approval of the statement. The individual or body with
9 policy-making powers may not approve the statement until at least 10 days after
10 publication of the statement under sub. (3). No state employee or official may
11 perform any activity in connection with the drafting of a proposed rule to which this
12 subsection applies except for an activity necessary to prepare the statement of the

SENATE BILL 319

1 scope of the proposed rule until the governor and the individual or body with
2 policy-making powers over the subject matter of the proposed rule approves the
3 statement.

4 **SECTION 2.** 227.135 (2m) of the statutes is created to read:

5 227.135 (2m) If the department of natural resources prepares a statement of
6 the scope of a proposed rule that was considered at the joint annual spring fish and
7 wildlife rule hearing of the department of natural resources and county meeting of
8 the Wisconsin conservation congress, that department shall present the statement
9 to the natural resources board for approval. The natural resources board may not
10 approve the statement until at least 10 days after publication of the statement under
11 sub. (3). If the natural resources board does not disapprove the statement within 30
12 days after the statement is presented to that board or by the 11th day after
13 publication of the statement in the register, whichever is later, the statement is
14 considered to be approved. No state employee or official may perform any activity
15 in connection with the drafting of a proposed rule to which this subsection applies
16 except for an activity necessary to prepare the statement of the scope of the proposed
17 rule until the natural resources board approves the statement.

18 **SECTION 3.** 227.135 (3) of the statutes, as affected by 2011 Wisconsin Act 21,
19 is amended to read:

20 227.135 (3) If the governor approves a statement of the scope of a proposed rule
21 under sub. (2), the agency shall send the statement to the legislative reference
22 bureau for publication in the register. If the natural resources board approves a
23 statement of the scope of a proposed rule under sub. (2m), the department of natural
24 resources shall send the statement to the legislative reference bureau for publication
25 in the register. On the same day that the agency sends the statement to the

SENATE BILL 319**SECTION 3**

1 legislative reference bureau, the agency shall send a copy of the statement to the
2 secretary of administration.

3 **SECTION 4.** 227.135 (5) of the statutes is created to read:

4 227.135 (5) This section does not apply to emergency rules that were
5 considered at the joint annual spring fish and wildlife rule hearing of the department
6 of natural resources and county meeting of the Wisconsin conservation congress.

7 **SECTION 5.** 227.137 (2) of the statutes, as affected by 2011 Wisconsin Act 21,
8 is amended to read:

9 227.137 (2) An Except as provided in sub. (2m), an agency shall prepare an
10 economic impact analysis for a proposed rule before submitting the proposed rule to
11 the legislative council staff under s. 227.15.

12 **SECTION 6.** 227.137 (2m) of the statutes is created to read:

13 227.137 (2m) After the department of natural resources publishes under s.
14 227.135 (3) a statement of the scope of a proposed rule that was considered at the joint
15 annual spring fish and wildlife rule hearing of the department of natural resources
16 and county meeting of the Wisconsin conservation congress, and before that
17 department submits the proposed rule to the legislature for review under s. 227.19
18 (2), a municipality, an association that represents a farm, labor, business, or
19 professional group, or 5 or more persons who would be directly and uniquely affected
20 by the proposed rule may submit a petition to the department of administration
21 asking the secretary of administration to direct the department of natural resources
22 to prepare an economic impact analysis for the proposed rule. If the secretary of
23 administration directs the department of natural resources to prepare the economic
24 impact analysis, that department shall prepare the economic impact analysis before
25 submitting the proposed rule to the legislature for review under s. 227.19 (2). The

SENATE BILL 319

1 secretary of administration shall direct the department of natural resources to
2 prepare an economic impact analysis for the proposed rule before submitting the
3 proposed rule to the legislature for review under s. 227.19 (2) if the secretary
4 determines that all of the following apply:

5 (a) The petition was submitted to the department of administration no later
6 than 90 days after publication of the statement of the scope of the proposed rule
7 under s. 227.135 (3) or no later than 10 days after publication of the notice for a public
8 hearing under s. 227.17, whichever is later.

9 (b) The proposed rule would cost affected persons \$20,000,000 or more during
10 each of the first 5 years after the rule's implementation to comply with the rule or the
11 proposed rule would adversely affect in a material way the economy, a sector of the
12 economy, productivity, competition, jobs, the environment, public health or safety, or
13 state, local, or tribal governments or communities.

14 **SECTION 7.** 227.137 (3) (intro.) of the statutes, as affected by 2011 Wisconsin
15 Act 21, is amended to read:

16 227.137 (3) (intro.) An economic impact analysis of a proposed rule prepared
17 under sub. (2) shall contain information on the economic effect of the proposed rule
18 on specific businesses, business sectors, public utility ratepayers, local
19 governmental units, and the state's economy as a whole. When preparing the
20 analysis, the agency shall solicit information and advice from businesses,
21 associations representing businesses, local governmental units, and individuals that
22 may be affected by the proposed rule. The agency shall prepare the economic impact
23 analysis in coordination with local governmental units that may be affected by the
24 proposed rule. The agency may request information that is reasonably necessary for
25 the preparation of an economic impact analysis from other businesses, associations,

SENATE BILL 319**SECTION 7**

1 local governmental units, and individuals and from other agencies. The economic
2 impact analysis shall include all of the following:

3 **SECTION 8.** 227.137 (3m) of the statutes is created to read:

4 227.137 (3m) An economic impact analysis of a proposed rule prepared under
5 sub. (2m) shall contain information on the effect of the proposed rule on specific
6 businesses, business sectors, and the state's economy. When preparing the analysis,
7 the department of natural resources shall solicit information and advice from the
8 Wisconsin Economic Development Corporation and from businesses, associations,
9 governmental units, and individuals that may be affected by the proposed rule. The
10 department of natural resources may request information that is reasonably
11 necessary for the preparation of the economic impact analysis from other state
12 agencies and from businesses, associations, governmental units, and individuals.
13 The economic impact analysis shall include all of the following:

14 (a) An analysis and quantification of the problem, including any risks to public
15 health or the environment, that the proposed rule is intending to address.

16 (b) An analysis and quantification of the economic impact of the proposed rule,
17 including the costs that are reasonably expected to be incurred by the state,
18 businesses, governmental units, and affected individuals.

19 (c) An analysis of the benefits of the proposed rule, including how the rule
20 reduces the risks and addresses the problems that the rule is intended to address.

21 **SECTION 9.** 227.137 (4) of the statutes, as affected by 2011 Wisconsin Act 21,
22 is amended to read:

23 227.137 (4) On the same day that the agency submits ~~the~~ an economic impact
24 analysis prepared under sub. (2) to the legislative council staff under s. 227.15 (1),
25 the agency shall also submit that analysis to the department of administration, to

SENATE BILL 319

1 the governor, and to the chief clerks of each house of the legislature, who shall
2 distribute the analysis to the presiding officers of their respective houses, to the
3 chairpersons of the appropriate standing committees of their respective houses, as
4 designated by those presiding officers, and to the cochairpersons of the joint
5 committee for review of administrative rules. If a proposed rule is modified after the
6 economic impact analysis is submitted under this subsection so that the economic
7 impact of the proposed rule is significantly changed, the agency shall prepare a
8 revised economic impact analysis for the proposed rule as modified. A revised
9 economic impact analysis shall be prepared and submitted in the same manner as
10 an original economic impact analysis is prepared and submitted.

11 **SECTION 10.** 227.137 (4m) of the statutes is created to read:

12 227.137 (4m) The department of natural resources shall submit an economic
13 impact analysis prepared under sub. (2m) to the legislative council staff, to the
14 department of administration, and to the petitioner.

15 **SECTION 11.** 227.137 (5) of the statutes is renumbered 227.137 (8).

16 **SECTION 12.** 227.137 (6) (intro.) of the statutes, as affected by 2011 Wisconsin
17 Act 21, is renumbered 227.137 (6) (a) (intro.) and amended to read:

18 227.137 (6) (a) (intro.) If an economic impact analysis regarding a proposed rule
19 prepared under sub. (2) indicates that a total of \$20,000,000 or more in
20 implementation and compliance costs are reasonably expected to be incurred by or
21 passed along to businesses, local governmental units, and individuals as a result of
22 the proposed rule or if an economic impact analysis is prepared under sub. (2m) for
23 a proposed rule that was considered at the joint annual spring fish and wildlife rule
24 hearing of the department of natural resources and county meeting of the Wisconsin
25 conservation congress, the department of administration shall review the proposed

SENATE BILL 319**SECTION 12**

1 rule and issue a report. The agency may not submit a proposed rule to the legislature
2 for review under s. 227.19 (2) until the agency receives a copy of the department's
3 report and the approval of the secretary of administration. The report shall include
4 all of the following findings:

5 **SECTION 13.** 227.137 (6) (a) of the statutes, as affected by 2011 Wisconsin Act
6 21, is renumbered 227.137 (6) (a) 1.

7 **SECTION 14.** 227.137 (6) (b) of the statutes, as affected by 2011 Wisconsin Act
8 21, is renumbered 227.137 (6) (a) 2.

9 **SECTION 15.** 227.137 (6) (c) of the statutes, as affected by 2011 Wisconsin Act
10 21, is renumbered 227.137 (6) (a) 3.

11 **SECTION 16.** 227.137 (6) (cm) of the statutes is created to read:

12 227.137 (6) (cm) No person is entitled to judicial review of any action taken by
13 the department of administration under this subsection with respect to an economic
14 impact analysis prepared under sub. (2m) for a proposed rule that was considered
15 at the joint annual spring fish and wildlife rule hearing of the department of natural
16 resources and county meeting of the Wisconsin conservation congress.

17 **SECTION 17.** 227.137 (6) (d) of the statutes, as affected by 2011 Wisconsin Act
18 21, is renumbered 227.137 (6) (a) 4.

19 **SECTION 18.** 227.137 (7) of the statutes, as affected by 2011 Wisconsin Act 21,
20 is renumbered 227.137 (6) (bm) and amended to read:

21 227.137 (6) (bm) Before issuing a report under sub. ~~(6)~~ par. (a), the department
22 of administration may return a proposed rule to the agency for further consideration
23 and revision with a written explanation of why the proposed rule is being returned.
24 If the agency head disagrees with the department's reasons for returning the
25 proposed rule, the agency head shall so notify the department in writing. The

SENATE BILL 319

1 secretary of administration shall approve the proposed rule when the agency has
2 adequately addressed the issues raised during the department's review of the rule.

3 **SECTION 19.** 227.14 (2) (a) 6. of the statutes, as affected by 2011 Wisconsin Act
4 21, is amended to read:

5 227.14 (2) (a) 6. Any analysis and supporting documentation that the agency
6 used in support of the agency's determination of the rule's effect on small businesses
7 under s. 227.114 or that was used when the agency prepared an economic impact
8 analysis under s. 227.137 (~~3~~) (2) or (2m).

9 **SECTION 20.** 227.17 (3) (em) of the statutes, as created by 2011 Wisconsin Act
10 21, is amended to read:

11 227.17 (3) (em) The economic impact analysis required under s. 227.137 (2),
12 any revised economic impact analysis required under s. 227.137 (4), and any report
13 prepared by the department of administration under s. 227.137 (6) for that analysis,
14 or a summary of that analysis and report and a description of how a copy of the full
15 analysis and report may be obtained from the agency at no charge.

16 **SECTION 21.** 227.185 of the statutes, as created by 2011 Wisconsin Act 21, is
17 amended to read:

18 **227.185 Approval by governor.** After Except as provided in this section,
19 after a proposed rule is in final draft form, the agency shall submit the proposed rule
20 to the governor for approval. The governor, in his or her discretion, may approve or
21 reject the proposed rule. If the governor approves a proposed rule, the governor shall
22 provide the agency with a written notice of that approval. No proposed rule may be
23 submitted to the legislature for review under s. 227.19 (2) unless the governor has
24 approved the proposed rule in writing. This section does not apply to a proposed rule
25 that was considered at the joint annual spring fish and wildlife rule hearing of the

SENATE BILL 319**SECTION 21**

1 department of natural resources and county meeting of the Wisconsin conservation
2 congress.

3 **SECTION 22.** 227.19 (3) (intro.) of the statutes, as affected by 2011 Wisconsin
4 Act 21, is amended to read:

5 227.19 (3) FORM OF REPORT. (intro.) The report required under sub. (2) shall be
6 in writing and shall include the proposed rule in the form specified in s. 227.14 (1),
7 the material specified in s. 227.14 (2), (3), and (4), a copy of any economic impact
8 analysis prepared by the agency under s. 227.137 (2) or (2m), a copy of any revised
9 economic impact analysis prepared by the agency under s. 227.137 (4), a copy of any
10 report prepared by the department of administration under s. 227.137 (6), a copy of
11 any energy impact report received from the public service commission under s.
12 227.117 (2), and a copy of any recommendations of the legislative council staff. The
13 report shall also include all of the following:

14 **SECTION 23.** 227.24 (1) (e) 1d. of the statutes, as affected by 2011 Wisconsin Act
15 32, is amended to read:

16 227.24 (1) (e) 1d. Prepare a statement of the scope of the proposed emergency
17 rule as provided in s. 227.135 (1), obtain approval of the statement as provided in s.
18 227.135 (2) or (2m), and send the statement to the legislative reference bureau for
19 publication in the register as provided in s. 227.135 (3). If the agency changes the
20 scope of a proposed emergency rule as described in s. 227.135 (4), the agency shall
21 prepare and obtain approval of a revised statement of the scope of the proposed
22 emergency rule as provided in s. 227.135 (4). No state employee or official may
23 perform any activity in connection with the drafting of a proposed emergency rule
24 except for an activity necessary to prepare the statement of the scope of the proposed
25 emergency rule until the governor and the individual or body with policy-making

SENATE BILL 319

1 powers over the subject matter of the proposed emergency rule approves the
2 statement.

3 **SECTION 24.** 227.24 (1) (e) 1g. of the statutes, as affected by 2011 Wisconsin Act
4 32, is amended to read:

5 227.24 (1) (e) 1g. ~~Submit~~ Except as provided in this subdivision, submit the
6 proposed emergency rule in final draft form to the governor for approval. The
7 governor, in his or her discretion, may approve or reject the proposed emergency rule.
8 If the governor approves a proposed emergency rule, the governor shall provide the
9 agency with a written notice of that approval. An agency may not file an emergency
10 rule with the legislative reference bureau as provided in s. 227.20 and an emergency
11 rule may not be published until the governor approves the emergency rule in writing.
12 This subdivision does not apply to a proposed emergency rule that was considered
13 at the joint annual spring fish and wildlife rule hearing of the department of natural
14 resources and county meeting of the Wisconsin conservation congress.

15 **SECTION 25. Initial applicability.**

16 (1) GUBERNATORIAL APPROVAL OF RULES. The treatment of sections 227.135 (2),
17 (2m), (3), and (5), 227.185, and 227.24 (1) (e) 1d. and 1g. of the statutes first applies
18 to a proposed rule whose statement of scope is published in the Wisconsin
19 Administrative Register on the effective date of this subsection.

20 (2) ECONOMIC IMPACT REPORTS. The treatment of sections 227.137 (2), (2m), (3)
21 (intro.), (3m), (4), (4m), (5), and (6) (intro.), (a), (b), (c), (cm), (d), and (7), 227.14 (2)
22 (a) 6., 227.17 (3) (em), and 227.19 (3) (intro.) of the statutes first applies to a proposed
23 administrative rule submitted to the legislature under section 227.19 (2) of the
24 statutes on the effective date of this subsection.

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(END)